IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

OP.No. 7031 of 1997(K)

PETITIONER:

B.SASIDHARAN, RETIRED ASSISTANT ENGINEER,
P.W.D.ROADS SECTION,
PRASANTHI, REVATHI NAGAR,
KOLLAM.

BY ADV. SMT.I.SHEELA DEVI
SRI.V.A.MUHAMMED

RESPONDENTS:

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1. THE STATE OF KERALA REP.BY
THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF PUBLIC WORKS,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER (ADMINISTRATION),
PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM

3. THE ASSISTANT EXECUTIVE ENGINEER,
P.W.D.ROADS SUB DIVISION, KARUNAGAPPALLY.

4. THE ACCOUNTANT GENERAL, THIRUVANANTHAPURAM.

BY FOR R1 TO R4, GOVERNMENT PLEADER, SMT.T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

ORDER ON I.A.NO.14550/2006

CLOSED

SD/-THOTTATHIL B.RADHAKRISHNAN, JUDGE,

18/06/2007

PETITIONER'S EXTS:

EXT.P1	TRUE COPY OF THE COMMUNICATION NO.GE 32/C/5-117/591, DATED 19/1/1996 ISSUED BY THE ACCOUNTANT GENERAL (A&E), KERALA, BRANCH THRISSUR.
EXT.P2	TRUE COPY OF THE REPRESENTATION DATED 15/2/1996 SUBMITTED BY THE PETITIONER BEFORE THE ACCOUNTANT GENERAL (A&E) KERALA, BRANCH, THRISSUR.
EXT.P3	TRUE COPY OF THE REPRESENTATION DATED 20/9/1995 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXT.P4	TRUE COPY OF THE JUDGMENT IN O.P.18376/95 DATED 24/11/1995 OF THE HONOURABLE HIGH COURT OF KERALA.
EXT.P5	TRUE COPY OF THE INTERIM ORDER IN O.P.NO.2663/96 DATED 14/2/96 OF THE HONOURABLE HIGH COURT OF KERALA.
EXT.P6	TRUE COPY OF THE ORDER NO.EB(3)2970/96 DATED 8/3/96 ISSUED BY THE 2ND RESPONDENT.
EXT.P7	TRUE COPY OF THE PROCEEDING NO.EB(3)2970/96 DATED 8/3/96 ISSUED BY THE 2ND RESPONDENT.
EXT.P8	TRUE COPY OF THE REPRESENTATION DATED 22/4/1996 SUBMITTED BY THE PETITIONER BEFORE THE ACCOUNTANT GENERAL (A&E) KERALA BRANCH, THRISSUR.
EXT.P9	TRUE COPY OF THE REPRESENTATION DATED 3/9/96 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.
EXT.P10	TRUE COPY OF THE COMMUNICATION NO.GE 30/C/5-117/315 DATED 4/7/96 ISSUED BY THE ACCOUNTANT GENERAL (A&E) KERALA, BRANCH OFFICE THRISSUR TO THE 3RD RESPONDENT.
EXT.P11	TRUE COPY OF THE COMMUNICATION NO.PR 6/PEN.A/551/A/96-97/298 DATED 9/10/96 ISSUED BY THE 4TH RESPONDENT.
EXT.P12	TRUE COPY OF THE REPRESENTATION DATED 31/10/1996 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

EXT.13	TRUE COPY OF THE PAY SLIP DATED 18/10/1996 ISSUED BY THE 4TH RESPONDENT.
EXT.P14	TRUE COPY OF THE REPRESENTATION DATED 19/11/1996 SUBMITTED BY THE PETITIONER BEFORE THE ACCOUNTANT GENERAL (A&E), KERALA BRANCH, THRISSUR.
EXT.P15	TRUE COPY OF THE LAST PAY CERTIFICATE DATED 30/11/1996 ISSUED BY THE 3RD RESPONDENT./
EXT.P16	TRUE COPY OF THE LAST PAY SLIP DATED 19/12/1996 ISSUED BY THE 4TH RESPONDENT.
EXT.P17	TRUE COPY OF THE PROCEEDINGS NO.22650/PE3(R)/1996 DATED 12/2/1997 ISSUED BY THE 2ND RESPONDENT.
EXT.P18	TRUE COPY OF THE PROCEEDINGS NO.PA.7/PEN.A.2965/C/2610, DATED 12/3/97 ISSUED BY THE 4TH RESPONDENT.
EXT.P19	TRUE COPY OF THE PROCEEDING DATED 12/3/1997 ISSUED BY THE 4TH RESPONDENT.
EXT.P20	TRUE COPY OF THE PROCEEDINGS NO.FE3(R)22650/96 DATED 14/3/1997 ISSUED BY THE 2ND RESPONDENT.
EXT.P21	TRUE COPY OF THE LIABILITY CERTIFICATE NO.EB3/2970/96 DATED 6/3/1997 ISSUED BY THE 4TH RESPONDENT.
EXT.P22	TRUE COPY OF THE ORDER NO.GO(P) NO.373/86/(59)/FIN, DATED 23/5/86 ISSUED BY THE 1ST RESPONDENT.
EXT.P23	TRUE COPY OF THE ORDER NO.GO(P)97/88/(192)/FIN DATED 8/2/88 ISSUED BY THE 1ST RESPONDENT.
EXT.P24	TRUE COPY OF THE ORDER NO.35/PRC-A/92/(135)/FIN, DATED 7/7/92 ISSUED BY THE 1ST RESPONDENT.
EXT.P25	TRUE COPY OF THE COMMUNICATION NO.PA/7/PEN A/297/B/305 DATED 3/6/1997 ISSUED BY THE ACCOUNTANT GENERAL.
EXT.P26	TRUE COPY OF THE COMMUNICATION NO.P46/PENA/551/A/96-97/51 DATED 25/4/97 ISSUED BY THE ACCOUNTANT GENERAL.
EXT.P27	TRUE COPY OF THE COMMUNICATION NO.GE32/C/8-117/311 DATED 26/6/98 ISSUED BY THE ACCOUNTANT GENERAL.
EXT.P28	TRUE COPY OF THE COMMUNICATION NO.PR6/PENA/551/A/96-97/210 DATED 7/8/1998 ISSUED BY THE ACCOUNTANT GENERAL.
EXT.P29	TRUE COPY OF THE COMMUNICATION DATED 27/8/1998 ISSUED BY THE ACCOUNTANT GENERAL.

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EXT.P30 TRUE COPY OF THE REPRESENTATION DATED 15/1/1999 SUBMITTED BY THE PETITIONER BEFORE THE CHIEF ENGINEER.

(*) EXT.P25 TRUE COPY OF THE DECISION REPORTED IN 2003(3)ILR KER 405.

(*) EXT.P25 IS CORRECTED AS EXT.P31, AS PER ORDER ON I.A.NO.7334/2007, DATED 18/6/2007.

RESPONDENTS' EXTS:

EXT.R1(a) PRODUCED TRUE COPY OF STATEMENT OF ARREARS

EXT.R1(b) PRODUCED TRUE COPY OF NON-LIABILITY CERTIFICATE (NO.EB3-2970/96) DATED 30/12/1997

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 7031 of 1997 (K)

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Dated this the 18th day of June, 2007

J U D G M E N T

Petitioner retired from service on 30/06/1998 as Assistant Engineer. The original petition was filed challenging Ext.P1 order. Ext.P1 is an audit observation raised by the fourth respondent imposing restrictions on the application of provisions of Rule 28A of Part I Kerala Service Rules.

2. The petitioner entered service as 2nd Grade Draftsman on 05/06/1962. He was promoted as 1st Grade Draftsman on 17/08/1965 and Assistant Engineer on 17/10/1980. Higher Grade for 13 years was granted on 17/10/1980, which happened to be revised and given effect to on 01/07/1979. 20 years grade was granted with effect from 01/07/1986. In all cases, pay was fixed under Rule 28A of Part I K.S.R.

3. As per Ext.P1, the fixation of pay in the second higher grade for 20 years stands objected on the ground that Rule 28A is not admissible as the petitioner had the opportunity to enjoy the benefit of two cadre promotions and one non-cadre promotion. There is no restriction that Rule 28A can be applied only twice. It is submitted that this Hon'ble Court while examining the scope and ambit of the applicability of Rule 28A of Part I K.S.R in the decision reported in **Saiful Islam and others vs. State of Kerala and others [2003 (3) I.L.R Ker 405]** came to the conclusion that there exists no restriction or impasse on the admissibility of Rule 28A. The application is not confined to twice or thrice. As such, the original fixation of pay of the second higher grade is perfectly in order and does not suffer from any illegality or irregularity. In view of the above decision, the objection contained in Ext.P1 is not to sustain. Hence the objection is not legal and valid.

4. But relying on Ext.P1 objection the pay of the petitioner was refixed disallowing the increments. Pensionary benefits of the petitioner were fixed on a basic pay of Rs.3400/- as against

Rs.3700/- admissible. Thus, the petitioner suffered heavy loss in the existing pay and pensionary benefits without cogent reasons.

5. For the aforesaid reasons, Ext.P1 is set aside and it is directed that the benefits due to the petitioner, ignoring Ext.P1 shall be released, within a period of three months from the date of receipt of a copy of this judgment.

Original petition is allowed as above. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 7031 of 1997 (K)

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J U D G M E N T

18th June, 2007